RECENT DECISIONS.

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ADMIRALTY—EMBARGO—RESTRAINT OF PRINCES—RETENTION OF PREPAID FREIGHT.—A shipper delivered cargo to a vessel bound on a voyage through the submarine danger zone. The bill of lading recited: "Restraints of princes and rulers excepted". "Freight for said goods to be prepaid in full, retained and irrevocably ship and/or cargo lost or not lost". Clearance was refused because of the embargo. *Held,* the bill of lading expressly provides for the payment of freight upon shipment of the cargo and the shipowner may retain it though the cargo was not carried, the carriage being prevented by an excepted peril. *Gracie D. Chambers* (1919) 39 Sup. Ct. 149.

Freight is compensation for the carriage of goods and if it be paid in advance and is not earned it is to be repaid, unless there be a special agreement to the contrary. See *Watson* v. *Duykinck* (1808) 3 Johns. 335. In England, prepaid freight in the absence of express agreement, need not be refunded if the ship has sailed, even though there is a total failure to deliver the cargo, *Byrne* v. *Schiller* (1871) 6 Ex. 319; see *Allison* v. *Bristol Ins. Co.* (1876) 1 A. C. 209, but in America an express agreement is required. See *National Steam Nav. Co.* v. *International Paper Co.* (1917) 241 Fed. 861. An operative embargo falls within the exception of the instant case, Carver, Carriage of Goods by Sea (6th ed.) § 82; see *Watts, Watts & Co. Ltd.* v. *Mitsui & Co.* (1917) A. C. 227, and when its duration is as indefinite as the submarine menace and the war, inception of the voyage becomes impossible, thus causing a "frustration" of the commercial venture. *Admiral Shipping Co.* v. *Weidner* (1917) 1 K. B. 222; *Atlantic Fruit Co.* v. *Solari* (1916) 238 Fed. 217. The loss, resulting therefrom, lies where it falls and the parties to the contract are left with no right to recover in respect of performance made or partly made before the frustration, whether by way of payment, or of services rendered or work done, provided no right of action has accrued under the contract before the frustration. *Horlock* v. *Beal* (1916) 114 L. T. R. 193; *Civil Service Coop. Soc.* v. *General Steam Nav. Co.* (1903) 2 K. B. 756; *The Tornado* (1888) 108 U. S. 342, 2 Sup. Ct. 746. But, notwithstanding the frustration before "breaking ground", *Gilchrist Transport Co.* v. *Boston Ins. Co.* (1915) 223 Fed. 716; *cf. Wood* v. *Hubbard* (1894) 62 Fed. 753, unpaid freight may nevertheless be recovered by the shipowner if the contract is construed to require payment upon shipment. *A. Coker & Co.* v. *Limerick S. S. Co. Ltd.* (1918) 118 L. T. 726. The instant case is to be supported on such a construction of the contract and on the conception of the maritime hazards which induced this particular venture. If the shipowner can assure himself that the freight money will be retained in spite of a frustration through an excepted peril, if he can make the shipper his insurer of the freight money by contracting to retain it irrevocably upon shipment, he can safely afford to charge a lower rate. So prompted, the claimant in the instant case received libellant's cargo. When the foreseen peril was realized, the contract was not dissolved, but by its very terms became effective in excusing the shipowner from

further performance of his undertaking. *Cf. The Allanwilde* (1919) 39 Sup. Ct. 147; *The Bris* (1919) 39 Sup. Ct. 150. It follows that the principal case was correctly decided.

AGENCY—TRAVELLING SALESMAN—AUTHORITY TO CONTRACT.—*Held,* that in the absence of express authority to bind the principal, a travelling salesman can merely solicit and transmit orders and the contract of sale does not become complete until the order is accepted by the principal. *Senner & Caplan Co.* v. *Gera Mills* (N. Y. App. Div. 1st Dept. 1918) 60 N. Y. L. J. 1361.

It is a well settled rule of law that a principal is liable for the acts of his agent, only in so far as those acts are in the scope of the agent's express or implied authority. Story, Agency (9th ed.) § 127. It is only in the application of the above rule that the difficulties occur; and to aid one in determining the scope of the agent's authority, it is often necessary and proper to take into account the usages and customs prevailing in similar cases. *Austrian, & Co.* v. *Springer* (1892) 94 Mich. 343, 54 N. W. 50; *Kaufman* v. *Farley Mfg. Co.* (1889) 78 Iowa 679, 43 N. W. 612; Aske, Customs & Usages of Trade, 391. For example, a so-called authority to "sell" real estate is usually confined to a mere authority to secure offers, which the principal may or may not accept. See *Stengel* v. *Sergeant* (1908) 74 N. J. Eq. 20, 68 Atl. 1106. It is the usual understanding among business men that a travelling salesman shall transmit all orders to his principal for the latter's approval or rejection, and it has come to be regarded as a custom, which the courts will recognize. See *Becker Co.* v. *Clardy* (1909) 96 Miss. 301, 51 So. 211; *John Matthews Apparatus Co.* v. *Renz* (1901) 22 Ky. L. R. 1528, 61 S. W. 9. Thus, in the absence of express authority to bind the principal, the travelling salesman has only authority to receive offers and cannot bind his principal in a contract, *Ryan & Miller* v. *The American Steel & Wire Co.* (1912) 148 Ky. 481, 146 S. W. 1099; *Bauman* v. *McManus* (1907) 75 Kan. 106, 89 Pac. 15; *Bensberg* v. *Harris* (1891) 46 Mo. App. 404, so that the prospective buyer may countermand his order at any time before its acceptance by the principal. *L. A. Becker Co.* v. *Alvey* (1905) 27 Ky. L. R. 832, 86 S. W. 974. The principal case seems altogether sound, especially as there was some evidence that the intended purchaser was aware of the agent's limited authority.

ASSIGNMENTS—CHOSES IN ACTION—NOTICE TO DEBTOR—BANKRUPTCY. —A contractor for city work assigned all money due or to become due under his contract, but the city was not notified of the assignment. The contractor became bankrupt and his trustee claimed the contract money. *Held,* the assignee, as against the contractor's trustee in bankruptcy, was entitled to those sums due and to become due from the city under the contract. *Montgomery* v. *City of Philadelphia et al.* (D. C. 1918) 253 Fed. 473.

Where there are several assignees in good faith of the same chose in action, and where a subsequent assignee first gives notice to the debtor or holder of the fund assigned, and the debtor or holder satisfies the chose to such assignee, the rights of prior assignees are cut off. *Dearle* v. *Hall* (1823) 3 Russ. Ch. *1; *Judson* v. *Corcoran* (1854) 58 U. S. 612, 15 Sup. Ct. 231; *cf. Herman* v. *Connecticut Mut. Life Ins. Co.* (1914) 218 Mass. 181, 105 N. E. 450; but *cf. Executors of Luce* v.